In the High Court of Judicature at Madras

Dated : 25.7.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

W.P.No.44160 of 2002

The State of Tamilnadu
rep. By The Deputy Commissioner (CT)
Vellore Division, Vellore. ... Petitioner

Vs.

1. M.Venkatesan,
Contractor
Kaveripakkam
Vellore District.

2. The Registrar
The Tamil Nadu Taxation Special Tribunal
Chennai 1. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the relief of issuance of writ of certiorari to call for the records relating to the order of the second respondent, made in O.P.No.1525 of 2000 dated 20.12.2002 and quash the same.

For Appellant :- Mr.Haja Nazirudeen
Special Govt. Pleader (Taxes)
For Respondents:- Mr.S.Ramanathan (R1)

ORDER

(Order of the Court was made by K.RAVIRAJA PANDIAN, J.)

The Revenue has filed the present writ petition seeking for the relief of issuance writ of certiorari to call for the records of the order dated 20.12.2002 made in O.P.No.1525 of 2000 by the Special Tribunal on the premise that the Special Tribunal totally went wrong in interpreting Section 3B and other relevant sub-clauses in granting the relief in favour of the assessee. The assessee suffered assessment at the hands of the assessing officer on the following circumstances.

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2. The assessee a works contractor has done works for the Public Works Department of the State Government for the year 1997-98 by entering into a works agreement. As per the agreement, the value of the contract work was Rs. 3,31,483/-. The assessing officer called upon the respondent assessee to produce the accounts maintained by him in order to frame the assessment for the assessment year 1997-98. As the assessee has not produced the books of accounts, the assessing officer framed the assessment by taking the total contract value of Rs.3,31,483/- and added 20% to the value for no reason and thereby brought the total and taxable turnover to Rs.3,98,780/- and confirmed the assessment on the said turnover thereby imposing a tax in a sum of Rs.43,758/- and in addition to that the assessing officer also levied penalty in a sum of Rs. 65,634/- . The correctness of the said assessment order was canvassed before the Special Tribunal by filing petition in O.P.No.1525 of 2000. The Special Tribunal has allowed the O.P. by interpreting Section 3-B of the TNGST Act. In the interpretation of the Special Tribunal as per section 3-B of the TNGST Act, if a person doing works contract has not furnished any detailed accounts for claiming the benefit, the assessment can be made against them by giving deduction from and out of the total contract value as per the percentage fixed in column 3 of the table attached to the above said section and thus the Tribunal set aside the assessment. The correctness of the same is canvassed before us by filing the present writ petition.

3. Learned Special Government Pleader submitted that sub-section (2) of Section 3B of the TNGST Act speaks about the total taxable turnover and further provides that from the total turnover the amount referred to under clause (a), (b), (c), (e), (d) and (f) has to be deducted. Hence the order impugned in the writ petition goes contra to the same.

4. We heard the arguments of the learned counsel on either side and perused the materials on record and also the relevant statutory provisions.

5. Section 3-B of the TNGST Act reads as follows:-

> Section 3-B Levy of tax on the transfer of goods involved in works contract - (1) Notwithstanding anything contained in sub-sections (2-B), (3), (4), (7) and (8) of Section 3, or section 7-a but subject to the other provisions of this Act including the provisions of sub-section (1) of Section 3, every dealer referred to in item (vi) of clause (g) of section (2) shall pay, for each, year a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned in sub-section (2), (2-A) or (2-C) of section 3, or as the case may be, in section 4.

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Explanation:- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each such item of work.

(2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall on and fro the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer :-

(a) all amounts involved in respect of goods involved i the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of Inter-state trade or commerce:

(b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract i the same form in which such goods were purchased.

(c) all amounts relating to the sale of any goods involved in the execution of works contract which are specifically exempted from tax under any of the provisions of this Act.

(d) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly.

Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amounts is included in the return filed by such sub-contractors; and

(e) all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

THE TABLE

Serial number	Type of works contract	Labour or other charges as a percentage value of the works contract
1	Electrical Contracts	15
2	All Structural Contracts	15

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Serial number	Type of works contract	Labour or other charges as a percentage value of the works contract
3	Sanitary Contracts	25
4	Watch and/or clock repair contracts	50
5	Dyeing contracts	50
6	All other contracts	30

(f) all amounts (including the tax collected from the customer) refunded to the customer or adjusted towards any amount payable by the customer, in respect of unexecuted portion of works contract based on the correction on account of measurements or check measurements, subject to the condition that

(i) the turnover was included in the return and tax paid, and

(ii) the amount (including the tax collected from the customer) is so refunded or adjusted, within a period of six months from the due date for filing of the return in which the said amount was included and tax paid

5. It is clear from sub-section (2) that the taxable turnover of the dealer of transfer of property involved in the execution of works contract shall on and from the 26th day of June 1986, be arrived at after deducting the amounts stated in clause (a),(b),(c), (d),(e) and from the total turnover of the dealer. The proviso attached to that section provides that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under the Act and that the turnover of such amounts is included in the return filed by such sub-contractors. Clause (e) provides that all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table therein, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority. The tabular column provides for 30% deduction.

6. In this case the assessee has not maintained any accounts and the same has not been produced before the assessing officer. Hence as per the statutory provisions referred to above, he is not entitled to claim any deduction over and above 30% which has been specified in clause (e) of sub-section 2 of Section 3B in respect of the situation in which no accounts has been maintained by the dealer. In that view of the matter, if a dealer has not produced any accounts, he cannot claim deduction over and above 30% of the expenses. Even though he has incurred such

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amount over and above 30%, if no account is produced or no account is maintained to the regular course, the dealer is entitled to deduction at the rate of 30% i.e. as per the schedule attached to the clause (e) . That is what the Tribunal concluded in its order , which is impugned in the writ petition. We find no illegality or irregularity in the interpretation made by the Tribunal about Section 3B of the TNGST Act. Hence the writ petition deserves to be dismissed and the same is dismissed as devoid of no merits. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Krr/

To

1. The Deputy Commissioner (CT)
Vellore Division, Vellore.

2. The Registrar,
The Tamil Nadu Taxation Special Tribunal,
Chennai.

1 CC To Mr.S.Ramanathan, Advocate, SR NO.46124.
1 CC to the Spl. Government Pleader(Taxes), SR NO.46430.

W.P. No.44160 of 2002

MS(CO)
RVL 27.08.2007

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